Chatfield, (1899), 121 Mich. 245; *Fisher* v. *Parr,* (1900), 92 Md. 245. It also repudiates the Pennsylvania rule, that directors "cannot be held to the same ordinary care that they take of their private affairs," and are not liable "if they perform their duties in the same manner as they are performed by all other directors of all other banks in the same city,"—*Swentzel* v. *Penn. Bank,* (1892), 147 Pa. St. 140, 30 Am. St. R. 718; *Briggs* v. *Spaulding,* (1891), 141 U. S. 132, 11 Sup. Ct. R. 924; *Killen* v. *Barnes* (1900), 106 Wis. 546, 574, 82 N. W. 536.

Cases of inattention to corporate affairs by directors are many, but the one above is the only one the writer has found involving vacations. Long ago Lord HARDWICKE said of directors and executive committees, "If some persons are guilty of gross non-attendance, and leave the management intirely to others, they may be guilty by this means of the breaches of trust that are committed by others,"—*The Charitable Corporation* v. *Sutton* (1742), 2 Atk. Ch. 400. This is considered almost the universal rule: *Mutual Building Fund* v. *Bossieux,* (1880), 3 Fed. R. 817; *Williams* v. *McKay,* (1885), 40 N. J. Eq. 189, 200, 53 Am. R. 775; *Marshall* v. *Farmers Bank,* (1889), 85 Va. 676, 17 Am. St. R. 84; *Warren* v. *Robison,* (1899), 19 Utah 289, 75 Am. St. R. 734; *Fisher* v. *Parr,* (1900), 92 Md. 245, 48 Atl. 621; *Fletcher* v. *Eagle,* (1905), 74 Ark. 585, 109 Am. St. R. 100. But compare *Briggs* v. *Spaulding,* (1891), 141 U. S. 132. Mere absence from a meeting is not alone sufficient to establish negligence, *Warner* v. *Penoyer,* (1898), 91 Fed. R. 587, 44 L. R. A. 761; *Murphy* v. *Penniman,* (1907), 105 Md. 452, 121 Am. St. R. 583; absence because of temporary severe illness is an excuse for non-attendance at a meeting, *Briggs* v. *Spaulding,* (*supra*), *Warren* v. *Robison,* (1902), 25 Utah 205; but one continually ill so he cannot attend to business should resign, *Rankin* v. *Cooper,* (1907), 149 Fed. 1010, or get a leave of absence from the board, *Briggs* v. *Spaulding,* (*supra*). Absence on private business is sometimes an excuse, *Warren* v. *Robison,* (1902), 25 Utah 205, but not always, *Rankin* v. *Cooper,* (1907), 149 Fed. 1010, 1016. H. L. W.

RIGHT OF THE UNITED STATES TO RECOVER MONEY PAID ON PENSION CHECKS BEARING FORGED INDORSEMENTS.—In the case of the *United States* v. *National Exchange Bank of Providence,* (1909), 29 Sup. Ct. 665, decided June 1, 1909, the Supreme Court of the United States rendered a decision which settles an apparent conflict relative to the law of commercial paper, that has heretofore existed in the federal courts. The main facts were as follows: The United States pension agent at Boston, during a period of several years, drew 194 checks, aggregating over $6,000 upon the sub-treasury of that city. The signatures of the payees of the checks were forged and about all the checks cashed by defendant bank. The checks in controversy were indorsed to another bank for collection, paid by the sub-treasury and later the forgeries were detected. Suit was brought by the United States in the circuit court for the amount of the checks and Judge Lowell decided that the Government could recover. 141 Fed. 209. On appeal the circuit court of appeals reversed the decision of the lower court. 151 Fed. 402. On this appeal, the

Supreme Court, reversing the judgment of the circuit court of appeals and affirming the judgment of the circuit court, held that the right of the United States to recover the amount of the checks was not conditioned either upon demand or the giving of notice of the discovery of the forgeries, in view of U. S. Rev. Stat., §§ 4764, 4765 (U. S. Comp. Stat. 1901, pp. 3284, 3285).

The defendant contended that by the operation of an exceptional rule known to prevail under certain conditions, as to commercial paper, the United States could not recover the payments of the checks, as there had been unreasonable delay in giving notice to defendant bank after the discovery of the forgeries. This exceptional rule has been followed since the early case of *Price* v. *Neal,* 3 Burr. 1354, both in the English and American courts in a distinct group of decisions where the drawee was charged with the knowledge of the genuineness of the drawer's signature. See *Smith* v. *Mercer,* 6 Taunt. 76; *Cocks* v. *Masterman,* 9 Barn. &C. 902; *Mather* v. *Lord Maidstone,* 18 C. B. 273. In *London & River Plate Bank* v. *Bank of Liverpool,* [1896] 1 Q. B. 7, the rule was somewhat extended, but modified in *Imperial Bank* v. *Bank of Hamilton,* [1903] A. C. 49, so as to preclude a recovery where no actual loss was shown by the delay in giving notice.

Mr. Justice STORY recognized the rule in *Bank of United States* v. *Bank of Georgia,* 10 Wheat. 333. Said the learned justice: "Even in relation to forged bills of third persons received in payment of a debt, there has been a qualification engrafted on the general doctrine, that the notice and return must be within a reasonable time; and any neglect will absolve the payer from responsibility." To the same effect see *Gloucester Bank* v. *Salem Bank,* 17 Mass. 32; *Salt Springs Bank* v. *Syracuse Sav. Inst.,* 62 Barb. 101; 3 KENT COMMENTARIES, ed. 13, p. 86, and note; *Thomas* v. *Todd,* 6 Hill 340; 2 CHITTY, CONTRACTS (11th Am. Ed. 931, and note; 5 AM. & ENG. ENCYC, 1069, note 1, 2; 5 DAN. NEG. INST. § 1371); *United States* v. *Clinton Nat. Bank,* 28 Fed. 357. Money paid on forged commercial paper to a holder for value and without fault cannot be recovered back where the holder would be prejudiced thereby, *Ellis* v. *Ohio L. I. & T. Co.,* 4 Ohio St. 628, 64 Am. Dec. 610; *Allen* v. *Fourth Nat. Bank,* 59 N. Y. 12.

United States v. *Cent. Nat. Bank,* 6 Fed. 134, and *United States* v. *Nat. Exchange Bank,* 45 Fed. 163, followed the exceptional rule. Both cases, however, can be distinguished from the principal case by the fact, that in one, no notice was given at all, and in the other, a month had expired before suit was brought. The government, dealing in commercial paper, is subject to the same rules and obligations that control individuals in like transactions. *Cooke* v. *United States,* 91 U. S. 389.

ALDRICH, District J., who delivered a dissenting opinion in the circuit court of appeals said, "apparently a question like that involved in this case has not been dealt with by the supreme court." Mr. Justice WHITE in delivering the opinion of the supreme court says, "We have been cited to no decision of a court of last resort, involving a case like the one before us, where it was held that such a case is controlled by the exceptional rule." The learned justice after reviewing many of the English and American

decisions comes to the conclusion that the exceptional rule does not apply to the government and especially in view of the statutes relative to the issuing of pension checks, and that the defendant's indorsement of the checks being a warranty of their genuineness no demand or notice before bringing suit for the repayment of the checks was necessary. The court refrained from expressing any opinion whether or not the facts presented a case of mutual mistake. In *United States* v. *Nat. Park Bank,* 62 Fed. 825, where the facts were quite similar to the principal case a recovery was allowed upon the theory, that the payments were made under a mutual mistake of fact. The principal case is in accord with *Merchants Bank* v. *Marine Bank* 3 Gill 96, 43 Am. Dec. 300; *White* v. *Continental Nat. Bank,* 64 N. Y. 316; *United States* v. *Onondaga County Sav. Bank,* 39 Fed. 259; *Onondaga County Sav. Bank* v. *United States,* 64 Fed. 703. The decision no doubt will have a tendency to make banks more careful in the payment of government pension checks. W. J. B.

DAMAGES RECOVERABLE ON STOCK BROKER'S FAILURE TO PURCHASE AS DIRECTED.—Whether it be due to a lack of available securities of a more tangible sort, to the urgencies which arise in modern business, or to other economic conditions pertinent to the present order, it must be apparent to those even casually connected with the business world that there is a constantly increasing amount of investment in stocks and bonds and that this condition is fraught with great importance from a legal aspect. Breach of contract, failure of duty and breach of trust in the fiduciary relations of the agent, or broker as he is generally known, having money of his principal or client to invest, give rise to many actions for damages and the courts are constantly engaged in enforcing reparation to the injured party.

It is so fundamental in the law of damages as to require no cited authority that the law aims at a reparation of the injured party, an indemnity of his wrong and a compensation for his loss. Where there exist no special facts which will permit him to collect exemplary damages, in jurisdictions where such are assessable, he will not be permitted to do more than make himself whole. In actions for breach of contract the rule in *Hadley* v. *Baxendale,* 9 Exch. Rep. 341, is, with modifications to fit particular situations, quite universal. In the absence of any special circumstances the damages for a breach of contract are such as may "reasonably be supposed to have been in the contemplation of the parties at the time they made the contract as the probable result of a breach of it." In actions *ex delicto* a somewhat broader rule applies as to the details of proving the damage but in general the damages assessed must be compensatory merely. *Allison* v. *Chandler,* 11 Mich. 542. For breach of contract to deliver stock the damages should not be reckoned by what it costs the defendant to perform but rather the detriment to the plaintiff, i. e., the value of the stock, its pecuniary equivalent or the stock itself together with any special damage. *Barnes* v. *Brown et al.,* 130 N. Y. 372.

Rather an extraordinary assessment of damages is to be observed in the case of *Wahl* v. *Tracy et al.,* — Wis. —, 121 N. W. 660. The plaintiff, a